

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

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In the Matter of )  
Batavia Landfill Superfund Site )

Eaton Corporation, )  
GTE Products Corporation, )  
NL Industries, Inc., )  
R.E. Chapin Manufacturing Works, Inc., )  
Unisys Corporation, )

Administrative  
Order on Consent  
Index Number  
II-CERCLA 95-0212

Respondents. )

Proceeding Under Section 106(a) of the )  
Comprehensive Environmental Response, )  
Compensation, and Liability Act of 1980, )  
as amended (42 U.S.C. § 9606(a)). )  
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ADMINISTRATIVE ORDER ON  
CONSENT FOR REMEDIAL DESIGN

I. INTRODUCTION AND JURISDICTION

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Eaton Corporation, GTE Products Corporation, NL Industries, Inc., R.E. Chapin Manufacturing Works, Inc., and Unisys Corporation ("Respondents") to perform the remedial design consistent with the remedy described in the Record of Decision dated June 6, 1995 for the Batavia Landfill Superfund site (the "Site"). This Order is issued to Respondents by the Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by section 106(a) of CERCLA (42 U.S.C. § 9606(a)). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987.

2. EPA has notified the New York State Department of Environmental Conservation ("NYSDEC") of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

3. Respondents' performance of the requirements of this Order shall not constitute nor be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding brought solely to enforce the terms of this Order and/or to seek penalties or damages related to this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms in any action to enforce its provisions, and Respondents further



agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order.

## II. PARTIES BOUND

4. This Order shall apply to and be binding upon each Respondent, its agents, successors, and assigns. Respondents are jointly and severally responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of any Respondent shall alter any of the Respondents' responsibilities under this Order.

5. Each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory or consultant retained to perform any Work under this Order, within sixty (60) days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing any Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms and conditions of this Order. With respect to the activities undertaken pursuant to this Order, Respondents agree not to assert that any contractor or subcontractor is not in a contractual relationship with them, within the meaning of 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible to the United States for compliance with this Order and for ensuring that their contractors, subcontractors and agents comply with this Order and perform any Work in accordance with this Order.

## III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a

Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

d. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

e. "NYSDEC" shall mean the State of New York Department of Environmental Conservation and any successor departments or agencies of the State.

f. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

g. "Record of Decision" or "ROD" shall mean the EPA document which selects a remedy at a Site. Two Records of Decision have been issued at the Site, one relating to the first operable unit at the Site signed on June 6, 1995 ("OU1-ROD"), and one relating to the second operable unit at the Site signed on March 31, 1993 ("OU2-ROD").

h. "Remedial Design" shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

i. "Remedial Design Work Plan" shall mean the document submitted by Respondents pursuant to paragraph 36 of this Order.

j. "Respondents" shall mean collectively the Respondents identified in paragraph 25 of this Order and individually any of the Respondents identified in paragraph 25.

k. "Response Costs" shall mean all costs, including direct costs, indirect costs, and accrued interest incurred by the United States to perform or support response actions at the Site. Response Costs include but are not limited to the costs of overseeing the Work, such as the costs of reviewing or developing plans, reports, and other items pursuant to this Order, and costs associated with verifying the Work.

l. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more paragraph.

m. "Site" shall mean the Batavia Landfill Superfund site, which includes a thirty-five acre former landfill, located approximately 3 miles west-northwest of the City of Batavia in

the Town of Batavia, Genesee County, New York State, and depicted generally on the map attached as Attachment A, together with the areal extent of the contamination released therefrom and all suitable areas in very close proximity necessary for implementation of the response action.

n. "State" shall mean the State of New York.

o. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design for the first operable unit at the Site, as described in the OU1-ROD and set forth in detail in Attachment B to this Order, and any modifications made in accordance with this Order.

p. "Subparagraph" shall mean a portion of a paragraph of this Order identified by a lower case letter.

q. "Supervising Contractor" shall mean the principal contractor retained by Respondents to supervise and direct the implementation of the Work under this Order.

r. "United States" shall mean the United States of America.

s. "Work" shall mean all activities Respondents are required to perform under this Order, except those required by Section XV (Record Preservation).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The Site is located in the Town of Batavia, Genesee County, New York approximately 3 miles west-northwest of the City of Batavia. The Site includes a thirty-five acre former landfill which is depicted generally on the map attached as Attachment A (the "Landfill"), together with the areal extent of the contamination released therefrom and all suitable areas in very close proximity necessary for implementation of the response action.

8. The Landfill is bounded to the north and portions of the east by the Galloway Swamp, to the east by the Town of Batavia's sanitary landfill which is now closed, to the south by Harloff Road, and to the west by vacant property. The New York State Thruway is approximately 200 feet to the south of the Landfill.

9. In 1967 the Town of Batavia purchased real property in the Town of Batavia and subsequently established the Landfill on the property as a municipal landfill. The Town ordinance establishing the property for use as a municipal landfill included the dumping of waste materials from commercial and industrial establishments and commercial haulers situated within the Town of Batavia as permitted uses.

10. In 1968, the City of Batavia entered into an agreement with the Town of Batavia which was amended in 1974 relating to use, operation, and financing of the Landfill which permitted residents, commercial and industrial establishments, and commercial haulers of the City of Batavia to dispose of waste materials at the Landfill.

11. Between 1968 and 1980, industrial wastes including hazardous substances, as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were sent to the Site for disposal by numerous entities operating in the vicinity of the Site. Among those entities were Eaton Corporation, GTE Products Corporation, NL Industries, Inc., R.E. Chapin Manufacturing Works, Inc., and Unisys Corporation or by a predecessor of such entities. Industrial wastes known to have been disposed of at the Site include but are not limited to chromium hydroxide sludge, magnesium sludges, inks, spent solvents, oils, and sweepings containing barium.

12. In December 1979, NYSDEC cited the Town of Batavia for violations of NYSDEC's permit at the Site. The violations included allowing the migration of leachate into the Galloway Swamp. In 1980, NYSDEC determined that the Landfill did not satisfy New York State regulatory requirements for permitted landfills and ordered the Landfill to cease operations.

13. Studies performed by NYSDEC in the early 1980's, as well as subsequent studies performed by EPA, have revealed releases of hazardous substances to the soil, sediment, and groundwater at the Site, attributable to disposal activities at the Site between 1968 and 1980.

14. On December 20, 1982, the Site was proposed for inclusion on the National Priorities List ("NPL") set forth at 40 C.F.R. Part 300, Appendix B, and the Site was added to the NPL by publication in the Federal Register on September 8, 1983 (48 Fed. Reg. 40658) pursuant to section 105 of CERCLA, 42 U.S.C. § 9605.

15. In 1984 EPA commenced a Remedial Investigation ("RI") for the Site which was completed by NL Industries, Inc. under an Administrative Order on Consent (Index No. II CERCLA 40201). The study at the Site was divided into two operable units for purposes of addressing the conditions at the Site, and the second operable unit RI was concluded by EPA in 1992.

16. In July 1990, EPA issued to the Respondents (other than NL Industries, Inc.) an Administrative Order on Consent (Index No. II CERCLA 90226) for the removal of drums and visibly contaminated soils from the Site. The drum and soil removal operation was completed in October 1991.

17. Following completion of the second operable unit RI, EPA performed a focused feasibility study for the second operable

unit which resulted in the issuance of a second operable unit record of decision on March 31, 1993 ("OU2-ROD"). The remedy selected in the OU2-ROD is currently being implemented by the Respondents pursuant to Administrative Order, Index Number II CERCLA-93-0215.

18. Although chronologically second, the first operable unit feasibility study was completed in August of 1994, and on June 6, 1995 a Site-wide remedy was selected ("OU1-ROD"). This order pertains to the remedial design of the remedy selected in OU1-ROD.

19. The investigations at the Site disclosed contamination by hazardous substances, which were detected in groundwater, surface water, and soils at the Site. Hazardous substances detected in the ground water at the Site include total chromium, arsenic, lead, 1,1,1,-trichloroethane, toluene, vinyl chloride, and methylene chloride. The investigations also revealed that groundwater from the southern portion of the Landfill is moving from the Landfill in a southerly and an easterly direction towards residential properties located south and east of the Landfill. Sampling of nearby residential wells demonstrated that hazardous substances, including 1,1,1,-trichloroethane were present in residential wells south of the Landfill.

20. In August of 1994, EPA publicly released the RI report, the FS report, and the proposed plan for the first operable unit. Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice and a summary of the proposed plan, conducted a public meeting, and provided a reasonable opportunity for public comment on the proposed remedial action.

21. On June 6, 1995, EPA selected a remedy for the first operable unit at the Site. The selected remedial alternative includes the following: (a) the excavation of contaminated soil from drum area R and the magnesium fines area in the northern area of the Landfill and consolidation of these materials under a landfill cap in the southern area of the Landfill; (b) subsequent grading of the northern area of the Landfill with clean topsoil and reseeding it for a vegetative cover; (c) excavation of the drums from the southern area of the Landfill containing hazardous substances, which are estimated in number to be 150, and their off-site treatment and disposal; (d) capping of the southern region of the Landfill; (e) an explosive gas survey to determine the need for constructing a passive gas venting layer or trench system under the cap; (f) construction of a leachate collection system, as necessary, and (g) performance of a pre-design ecological assessment to define impacts of the Landfill on fish, wildlife, and associated habitats.

22. Actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the interim response

action selected in the OU1 ROD, may present an imminent and substantial endangerment to the public health, welfare, or the environment.

23. The Town of Batavia, a municipal corporation of the State of New York, owns the Landfill and operated the Landfill during a time when hazardous substances were disposed of, and it is therefore a liable person with respect to the Site pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

24. The City of Batavia, a municipal corporation of the State of New York, operated the Landfill during a time when hazardous substances were disposed of, and by contract, agreement, or otherwise arranged for the disposal of hazardous substances owned or possessed by other parties at the Site, and it is therefore a liable person with respect to the Site pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

25. a. Respondent NL Industries, Inc., through its former Doehler-Jarvis Division, is a "person" as defined in CERCLA which by contract, agreement, or otherwise arranged for the disposal of hazardous substances at the Site, and it is therefore a liable person with respect to the Site pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a);

b. Respondent Unisys Corporation, formerly named Burroughs Corporation, is a "person" as defined in CERCLA which by contract, agreement, or otherwise arranged for the disposal of hazardous substances at the Site, and it is therefore a liable person with respect to the Site pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a);

c. Respondent Eaton Corporation is a "person" as defined in CERCLA which by contract, agreement, or otherwise arranged for the disposal of hazardous substances at the Site, and it is therefore a liable person with respect to the Site pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a);

d. Respondent R.E. Chapin Manufacturing Works, Inc. is a "person" as defined by CERCLA which by contract, agreement, or otherwise arranged for the disposal of hazardous substances at the Site, and it is therefore a liable person with respect to the Site pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a); and

e. Respondent GTE Products Corporation, predecessor to GTE Sylvania, Inc., is a "person" as defined in CERCLA which by contract, agreement, or otherwise arranged for the disposal of hazardous substances at the Site, and it is therefore a liable person with respect to the Site pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

26. In April 1982 EPA sent notice to each of Respondents (or to a predecessor of the Respondent) of its potential liability for costs of response at the Site pursuant to CERCLA. EPA sent subsequent notices of potential liability in 1984 in connection with planned RI/FS activities and in 1988 in connection with planned removal activities. On May 28, 1993, EPA sent special notice to each Respondent pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, to determine whether Respondents would implement the remedy selected for the second operable unit at the Site and reimburse EPA for its past Response Costs associated with the Site. Negotiations commenced between EPA and representatives of Respondents but in August 11, 1993, Respondents declined to enter into a settlement for the implementation of the remedy set forth in the OU2 ROD. Administrative Order, Index Number II-CERCLA 93-0215, was thereafter issued on September 21, 1993, directing Respondents to implement said remedy, and Respondents are currently in compliance.

27. The Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

28. Each Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

29. Each Respondent is a "liable" party as defined in section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

30. The substances listed in paragraph 19 are found in the ground water at the Site and are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

31. The past and present disposal and migration of hazardous substances from the Site are "releases" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. The release of one or more hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

33. Respondents have been given an opportunity to discuss with EPA the basis for issuance of this Order and its terms. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

#### V. ORDER

34. Based on the foregoing, Respondents are hereby ordered, jointly and severally, to comply with all of the terms and provisions of this Order, including all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines related thereto.



## VI. WORK TO BE PERFORMED

35. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Respondents under this Order shall be under the direction and supervision of a qualified contractor (hereinafter, the "Supervising Contractor"), the selection of which shall be subject to disapproval by EPA. Within 30 days after the effective date of this Order, Respondents shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will either approve the proposed contractor, accompanied by an authorization to proceed, or issue a notice of disapproval. If at any time after EPA approves a Supervising Contractor Respondents propose to change that Supervising Contractor, Respondents shall give such notice to EPA and must obtain an approval and an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Order.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Respondents in writing. Within 30 days of EPA's disapproval of a proposed contractor, Respondents shall submit to EPA a list of contractors (which does not include the contractor previously disapproved by EPA) that would be acceptable to them, including the qualifications of each contractor. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Respondents may select any contractor from those not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

36. Remedial Design.

a. Within 75 days of the date that EPA provides Respondents with notice of approval of the Supervising Contractor and authorization to proceed pursuant to paragraph 35. a, above,, Respondents shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for the design of the remedy consistent with the OU1-ROD in accordance with the attached SOW (see Attachment B).

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including plans and schedules for the completion of an ecological assessment consistent with the attached "Ecological Assessment Work Plan" prepared for EPA by TRC Environmental (see Attachment C); any plans for obtaining access and, if appropriate, other approvals; a pre-final/final design submittal; and a Construction Quality Assurance Plan

("CQAP"). In addition, the Remedial Design Work Plan shall include a preliminary schedule for Remedial construction.

c. Upon approval of the Remedial Design Work Plan by EPA, Respondents shall implement the Remedial Design Work Plan. The Respondents shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Review of Submissions). Unless otherwise directed by EPA, Respondents shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) CQAP; (4) schedule for Remedial Action construction activities; and (5) Contingency Plan. The CQAP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official, independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

37. Respondents shall ensure that a qualified professional engineer, licensed by the State, oversees all of the Work performed at the Site under this Order, and that such professional engineer inspects such Work.

#### VII. ENDANGERMENT AND EMERGENCY RESPONSE

38. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify the RPM or, if the RPM is unavailable, the Chief of the New York/Caribbean Superfund Branch II of the Emergency and Remedial Response Division of EPA Region II. Respondents shall take such action in consultation with the RPM and in accordance with all applicable provisions of this Order, including the Health and Safety Plan. In the event that Respondents fails to take appropriate response action as required by this Section, EPA may take respond and seek reimbursement for all costs of the response action, and Respondents may be subject to penalties pursuant to Section XVIII of this Order.

39. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

## VIII. EPA REVIEW OF SUBMISSIONS

40. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may (a) approve the submission, (b) approve the submission with modifications pursuant to paragraph 42, below, (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments, or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in (a) or (b) of this paragraph.

41. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to their right to invoke the dispute resolution procedures set forth in Section XVII of this Order with respect to the modifications or conditions made by EPA.

42. Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, within twenty-one (21) days, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

43. If any submission is not approved by EPA and EPA assumes responsibility for performing all or part of a task, Respondents shall be deemed to be in violation of this Order. Any assessment of penalties as a result of such a violation shall be subject to the dispute resolution procedures set forth in Section XVII.

44. All plans, reports and other submittals required to be submitted to EPA under this Order, upon approval by EPA, are deemed to be incorporated in and an enforceable part of this Order.

## IX. PROGRESS REPORTS

45. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the tenth (10th) day of each month following the effective date of this Order.

## X. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

46. a. Respondents shall complete and submit any QA/QC plan(s) in accordance with the EPA publication "Test Methods for Evaluating Solid Wastes" ("SW-846") (November, 1986), the "Region II CERCLA Quality Assurance Manual" (October 1989), and the EPA documents entitled "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS-005/80) and "Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring" (USEPA, Office of Water Regulations and Standards, May 1984), or any revised versions thereof.

b. Respondents shall use QA/QC procedures in accordance with the QA/QC Plan(s) submitted and approved by EPA pursuant to this Order, and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual (November 1984), the National Enforcement Investigations Center Manual for the Evidence Audit (September 1981), and Section 1.3 of SW-846, or any amended versions thereof, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondents shall:

i. Ensure that all contracts with laboratories used by Respondents for the analysis of samples taken pursuant to this Order provide for access of EPA personnel and EPA-authorized representatives to assure the accuracy of laboratory results related to the Site;

ii. Ensure that the laboratories utilized by Respondents for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis", dated February 1988, and any amendments made thereto during the course of the implementation of this Order;

iii. Ensure that all laboratories used by Respondents for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program;

iv. Ensure that the laboratories used by Respondents for the analysis of samples taken pursuant to this Order analyze samples that EPA may submit to those laboratories for purposes of insuring that the laboratories meet EPA-approved QA/QC requirements; and

v. Agree that sampling data generated consistent with the QA/QC Plan shall be admissible as evidence, without objection, in any proceeding under this Order.

47. Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA or its authorized representatives, of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

#### XI. COMPLIANCE WITH APPLICABLE LAWS

48. All activities undertaken by Respondents pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate federal, State and local laws, regulations and permits, including laws relating to occupational safety and health. In the event that there is a conflict in an application of applicable or relevant and appropriate federal, State or local laws or regulations, the more stringent law or regulation shall apply. EPA has determined that the activities contemplated by this Order are consistent with the NCP.

49. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site, although Respondents shall comply with the substantive requirements that would otherwise be included. Where any portion of the Work requires a federal, State, or local permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

50. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal, State, or local statute or regulation.

51. All materials removed from the Site shall be disposed of or treated at a facility approved by the RPM and in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), with the EPA "Revised Off-Site policy," OSWER Directive 9834.11, November 13, 1987, and with all other applicable federal, State, and local requirements.

XII. RPM, PROJECT COORDINATOR, NOTIFICATION

52. EPA has designated the following individual as its RPM at the Site:

Michael Walters  
New York/Caribbean Superfund Branch II  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 20th Floor  
New York, N.Y. 10007-1866  
(212) 637-4279

53. If EPA changes its RPM, EPA will inform Respondents in writing of the name, address, and telephone number of the new RPM. The RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator by the NCP. The RPM shall have authority, consistent with the NCP, to halt any work required by this Order and to take any necessary response action.

54. Within ten (10) days after the effective date of this Order, Respondents shall designate a Project Coordinator and shall submit the name, address, telephone number, qualifications and job title of the Project Coordinator to EPA for review and approval. Respondents' Project Coordinator shall be responsible for overseeing Respondents' implementation of this Order. If Respondents wish to change their project Coordinator, Respondents shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator. Respondents selection of a Project Coordinator shall be subject to EPA approval.

55. Whenever, under the terms of this Order, notice is required to be given, a report or other document is required to be forwarded by or to EPA or a Respondent, or any other written communication is required, such correspondence shall be directed to the following individuals at the addresses specified below:

a. As to EPA:

2 copies (or 5 copies if such communication is a plan or report):

Chief, Western New York Superfund Section II  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 20th Floor  
New York, N.Y. 10007-1866

Attention: Batavia Landfill Superfund Site Remedial  
Project Manager

1 copy: Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 17th Floor  
New York, N.Y. 10007-1866

Attention: Batavia Landfill Superfund Site Attorney

b. As to the State:

2 copies (or 7 copies if such communication is a plan or report):

Michael J. O'Toole, Jr.  
Director, Division of Hazardous Waste Remediation  
NYS Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010

Attention: Batavia Landfill Site Engineer

c. As to Respondents:

1 copy: To such address as Respondents' Project Coordinator shall, by written notice to EPA, request.

### XIII. COMMUNITY RELATIONS

56. Respondents shall cooperate with EPA in providing information regarding the Site or the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

### XIV. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

57. Respondents shall use its best efforts to obtain timely access to any areas where access is necessary to perform the work under this Order. Respondents shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the Work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Work, the Site, or Respondents and their representatives or contractors pursuant to this Order, reviewing the progress of Respondents in carrying out the terms of this Order, conducting tests as EPA or its authorized representatives or contractors deem necessary, using a camera, sound recording device or other documentary type equipment, and verifying the data submitted to

EPA by Respondents. Respondents shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to the Work which is within Respondents' control (including its contractors and/or agents). Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law.

58. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondents. Respondents shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

59. Respondents shall maintain for the period during which this Order is in effect an index of documents that Respondents claim contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

#### XV. RECORD PRESERVATION

60. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession and/or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including records pertaining to sampling, analysis, or chain of custody procedures manifests, trucking logs, receipts, reports, correspondence, or other documents or information related to the Work.

61. Until ten (10) years after completion of the Work, Respondents shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of their contractors and agents that relate in any manner and to the performance of the Work. At the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States Respondents shall deliver any such records or documents to EPA.



## XVI. REIMBURSEMENT OF COSTS

62. Respondents hereby agree to reimburse EPA for those Response Costs incurred by EPA with respect to the Site related to the oversight and implementation of this Order, including both direct and indirect costs. EPA will send a bill to Respondents for the costs incurred by EPA. The billing will be accompanied by a printout of cost data in EPA's financial management system and by a calculation of EPA's indirect costs. EPA's costs may include costs incurred by EPA in overseeing Respondents' implementation of the requirements of this Order and any costs incurred while obtaining access. Respondents shall, within thirty (30) days of receipt of such billing, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund."

63. Respondents may invoke the dispute resolution procedures set forth in Section XVII of this Order with respect to payment demands submitted to Respondents by EPA under paragraph 62, above. However, Respondents agree to limit any disputes concerning such costs to accounting errors, the inclusion of costs outside the scope of this Order, and the inclusion of costs inconsistent with the NCP. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set forth above. Respondents bear the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Order or the inclusion of costs inconsistent with the NCP.

64. The payment that Respondents are required to make pursuant to the preceding paragraph shall be mailed to the following address:

EPA - Region II  
Attn: Superfund Accounting  
P.O. Box 360188M  
Pittsburgh, PA 15251

The check shall reference the name of the Site (the "Batavia Landfill Superfund Site") and the index number of this Order. A copy of the check and of the accompanying transmittal letter shall be sent to the EPA addresses identified in paragraph 55, above.

65. Respondents shall pay interest on any amounts overdue under paragraph 62, above. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

## XVII. DISPUTE RESOLUTION

66. Any significant dispute concerning activities or deliverables required under this Order for which dispute resolution has been expressly provided herein shall be resolved as follows: if Respondents object to an EPA notice of disapproval or determination made pursuant to this Order, and if the given dispute is one for which dispute resolution has been expressly provided herein, Respondents shall notify EPA's Project Coordinator, in writing, of their objections within fourteen (14) days of receipt of the disapproval notice or determination. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent to EPA by certified mail, return receipt requested. EPA and Respondents will then have an additional fourteen (14) days to reach agreement, and EPA may respond with written comments to Respondents' written objections within this period. If an agreement is not reached within the fourteen (14) days, Respondents may, within seven (7) days of the conclusion of the aforementioned fourteen (14) day period, request a determination by the Chief of the New York/Caribbean Compliance Branch of the Emergency and Remedial Response Division, EPA Region II (hereinafter, the "Chief"). The Chief will provide a written statement setting forth his or her determination and the reasons therefor. Such a request by Respondents shall be made in writing. The Chief's determination is EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself and seek reimbursement from Respondents of the costs of that work, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

67. While a matter is pending in dispute resolution, Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedules which are approved by EPA and applicable to the work required pursuant to this Order. However, if the dispute and its resolution cause a delay which makes it impracticable, in EPA's discretion, for Respondents to meet any obligation set forth in or established pursuant to this Order, the deadline for such obligation shall be extended by a period not to exceed the time of the delay resulting from the dispute and its resolution, and stipulated penalties shall not accrue for the period for which the deadline is extended. Respondents shall not be entitled to any such extension if EPA determines that Respondents' invocation of the dispute resolution procedures is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Respondents request an extension of any deadline (not

otherwise the subject of dispute resolution pursuant to the provisions of this Order), and if EPA declines to grant such an extension, any delay caused by EPA's consideration of the request shall not entitle Respondents to any extension. Subject to this paragraph, the invocation of dispute resolution does not stay the accrual of stipulated penalties under this Order.

#### XVIII. FORCE MAJEURE

68. Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by an event of force majeure. For purposes of this Order, a force majeure event is defined as any event that delays or prevents performance of any obligation under this Order arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including their contractors and subcontractors, despite Respondents' best efforts to fulfill the obligation. A force majeure event does not include financial inability to complete the Work or increased cost of performance.

69. Respondents shall orally notify the RPM if circumstances have occurred or are likely to occur which may delay or prevent the performance of any activity required by this Order, regardless of whether those circumstances constitute an event of force majeure. If the On-Scene Coordinator cannot be reached, Respondents shall leave a message at his or her office. In addition, Respondents shall notify EPA in writing within seven (7) calendar days after the date when Respondents first become aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond its control (should that be Respondents' claim); (b) the actions (including pertinent dates) that Respondents have taken and/or plans to take to minimize any delay; and (c) the date by which or the time period within which Respondents propose to complete the delayed activities. Such notification shall not relieve Respondents of any of its obligations under this Order. Respondents' failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondents' right to claim an event of force majeure. The burden of proving that a force majeure event has occurred shall rest with Respondents.

70. If EPA determines a delay in performance of a requirement under this Order is or was attributable to an event of force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete

other tasks required by the Order which are not directly affected by the event of force majeure.

71. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event or if Respondents object to the length of the extension determined by EPA pursuant to the paragraph 70, above, the issue shall be subject to the dispute resolution procedures set forth in Section XVII of this Order. In order to qualify for a force majeure defense, Respondents shall have the burden of demonstrating that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph 69, above.

#### XIX. STIPULATED AND STATUTORY PENALTIES

72. If Respondents fail, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, and such failure is not excused under the terms of Section XVII (Force Majeure), Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below for each day of noncompliance:

<u>Days After Required Date</u>	<u>Stipulated Penalty</u>
1 to 10 days	\$ 375.00/day
11 to 20 days	\$ 750.00/day
21 to 40 days	\$ 1,500.00/day

Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected, through the 40th day of such noncompliance. Such penalties shall be due and payable ten (10) days following receipt of a written demand from EPA, or within ten (10) days of completion of dispute resolution under Section XVII (should the dispute resolution procedures be timely invoked by Respondents with respect to an EPA assessment of stipulated penalties), whichever is later. Payment of any such penalty to EPA shall be made by cashier's or certified check made payable to the "Hazardous Substance Superfund," with a notation of the index number of this Order, and shall be mailed to the address set forth in paragraph 64, above. A letter stating the basis for the penalties, the name and address of the Site, and the EPA Region number shall accompany any such payment; a copy of the letter and the check shall be mailed to the EPA addressees listed in paragraph 55, above. Late payments shall accrue interest in

accordance with Section XVI of this Order (Reimbursement of Costs).

73. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Order.

74. Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

#### XX. ASSURANCE OF ABILITY TO COMPLETE WORK

75. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within thirty (30) days of the effective date of this Order one of the following; (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents have sufficient assets available to perform the Work. If EPA determines that such financial information is inadequate, Respondents shall, within thirty (30) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

76. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

## XXI. ADDITIONAL WORK

77. If EPA determines that additional work not specified in but consistent with the objectives of the SOW is necessary to accomplish the objectives of this Order, and such work is not inconsistent with the NCP, Respondents shall be notified in writing by EPA of such determination and the details concerning said additional work.

78. Any such additional work determined to be necessary by EPA shall be completed by the Respondents in accordance with the standards and specifications determined or approved in writing by EPA. Respondents shall submit to EPA for approval an amendment to the Work Plan and a schedule for the additional work. EPA may modify the proposed amended Work Plan and/or determine a schedule for the additional work. The additional work shall be consistent with the purposes and objectives of this Order and the NCP.

79. Respondents may invoke Dispute Resolution procedures set forth in Section XVII with regard to (a) EPA's determination that additional work is necessary to carry out the objectives of this Order, (b) whether said additional work is not inconsistent with the NCP, and (c) the standards, specifications, and schedules for said additional work. EPA reserves the right to undertake additional work and to seek reimbursement of the costs incurred.

## XXII. ACCESS TO SITE NOT OWNED BY RESPONDENTS

80. If the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this Order is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use its their best efforts to obtain Site access agreements from the present owners within ninety (90) days of the effective date of this Order, or such other assurances of satisfactory access required to perform the Work as may be approved by EPA pursuant to a Site access plan submitted within such ninety (90) day period. Such agreements or other assurances of access shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondents or Respondents' authorized representatives and contractors, and such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with Site activities. Respondents shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on

their behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondents as EPA's authorized representatives under section 104(e) of CERCLA. Respondent's best efforts shall include providing reasonable compensation to any property owner where access is necessary. If access agreements or other access assurances are not obtained within the time referenced above, Respondents shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

#### XXIII. UNITED STATES NOT LIABLE

81. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

#### XXIV. ENFORCEMENT AND RESERVATIONS

82. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any Response Costs incurred by the United States related to the performance of any actions required pursuant to this Order and not reimbursed by Respondents. This reservation shall include past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support an oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

83. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief. Notwithstanding, EPA will not perform the response action required under this Order (or any portion of that response

action) unless Respondents are deemed to be out of compliance with this Order.

84. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

85. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6991. (also known as the Resource Conservation and Recovery Act), and any other applicable statute or regulation.

86. Respondents shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$25,000 for each day in which Respondents willfully violate, or fail or refuse to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

87. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

88. If a court issues an order that invalidates any provision of this Order or finds that or any one or more of the Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents, or the remaining Respondents, as the case may be, shall remain bound to comply with all provisions of this Order not invalidated by the court.

#### XXV. DISCLAIMER

89. By signing and taking actions under this Order, Respondents do not admit, adopt, accept, concede, or acknowledge the Findings of Fact and Conclusions of Law contained herein. Except as otherwise provided in this Order, Respondents do not admit liability under CERCLA or any other statute or common law and any responsibility for Response Costs or damages thereunder, and do not, by signing this Order, waive any rights they may have. Respondents retain their rights to assert claims against other potentially responsible parties at the Site. With regard to



claims for contribution against Respondents, the Parties agree that Respondents are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). Furthermore, nothing in this Order shall be deemed to constitute a waiver by any party of the attorney-client privilege, attorney work product privilege, or any other privilege under law.

#### XXVI. ADMINISTRATIVE RECORD

90. Upon request by EPA, Respondents must submit to EPA all documents related to the response action for possible inclusion in the administrative record file.

#### XXVII. TERMINATION AND SATISFACTION


91. This Order shall terminate when Respondent completes all activities required under this Order, including the payment of any stipulated penalties demanded by EPA, and submission of the certification in accordance with paragraph 92, below, and EPA has approved the certification in writing. Following satisfaction of the requirements of this Order, Respondents shall have resolved its obligation to EPA for the work pursuant to this Order. Such notice shall not, however, terminate Respondent's obligation to comply with any of Respondent's remaining obligations under this Order, including the record preservation requirements.

92. The certification referred to in the preceding paragraph shall be signed by a responsible official(s) representing one or more of the Respondents. Each representative making such a certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete. I further certify that I have been delegated the authority by Respondents to make this certification on their behalf". For purposes of this Order, a responsible official is a corporate official who is in charge of a principal business function.

#### XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME

93. This Order shall be effective three days after the date that this Order is received by counsel for Respondents. All times for performance of ordered activities shall be calculated from this effective date.

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
JEANNE M. FOX  
Regional Administrator  
U.S. Environmental Protection Agency  
Region II

9/29/95  
Date of Issuance

CONSENT

Respondent EATON CORPORATION has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order and hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

  
(signature)

JAMES A. ROGALS  
(printed name of signatory)

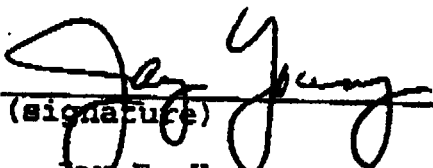
SEPT. 29 1995  
DATE

MEMBER OF THE FIRM OF  
(title of signatory)

WILMAR, CUTLER AND PICKERING  
COUNSEL FOR EATON CORPORATION

CONSENT

Respondent NL Industries, Inc. has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order and hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

  
(signature)

Jay F. Young

(printed name of signatory)

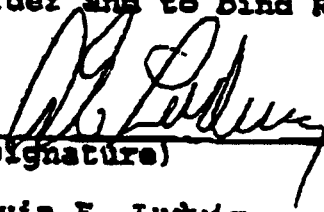
Principal Environmental Eng.

(title of signatory)

September 29, 1995  
DATE

**CONSENT**

**GTE Operations Support**  
**Respondent Incorporated** has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order and hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

  
(signature)


**Alvin E. Ludwig**  
(printed name of signatory)

**VP-Controller**  
(title of signatory)

**9/29/95**  
DATE

CONSENT

Respondent R.E. Chapin Manufacturing Works, Inc. has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order and hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

  
(signature)

27 SEPTEMBER 1995  
DATE

DAVID E WARD  
(printed name of signatory)

PRESIDENT  
(title of signatory)

CONSENT

Respondent Town of Batavia has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order and hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

June C Vukman  
(signature)

10-19-95  
DATE

June C. Vukman  
(printed name of signatory)

Supervisor  
(title of signatory)

*W. Mugdan*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

-----X  
In the Matter of )  
the Batavia Landfill Superfund Site )  
 )  
Eaton Corporation, )  
GTE Products Corporation, )  
NL Industries, Inc., )  
R.E. Chapin Manufacturing Works, Inc., ) Administrative  
Unisys Corporation, ) Order on Consent  
City of Batavia, ) Index Number  
Town of Batavia, ) II-CERCLA 95-0212  
 )  
Respondents. )  
 )  
Proceeding Under Section 106(a) of the )  
Comprehensive Environmental Response, )  
Compensation, and Liability Act of 1980, )  
as amended (42 U.S.C. § 9606(a)). )  
-----X

AMENDMENTS TO THE ADMINISTRATIVE  
ORDER ON CONSENT FOR REMEDIAL DESIGN

1. The following amendments to Administrative Order on Consent, Index Number II CERCLA-95-0212 are proposed and agreed to:
  - a. add "The City of Batavia" and "The Town of Batavia" to the caption on page 1 of the above-referenced Order;
  - b. amend "the Town of Batavia" to "Respondent Town of Batavia" in paragraphs 8, 9, 10, 12, and 23;
  - c. amend "the City of Batavia" to "Respondent City of Batavia" in paragraphs 10 and 24.
2. The above referenced Amendments shall be effective upon issuance by the Regional Administrator of Region II, U.S. EPA.


U.S. ENVIRONMENTAL PROTECTION AGENCY

*Will. J. Fox*  
JEANNE M. FOX  
Regional Administrator  
U.S. Environmental Protection Agency  
Region II

*12/7/58*  
Date of Issuance

CONSENT

Respondent City of Batavia has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order and hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

  
(signature)

October 23, 1995

DATE


George Spinnegan  
(printed name of signatory)

City Council President  
(title of signatory)



CONSENT

Respondent UNISYS CORPORATION has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order and hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

  
(signature)

September 28, 1995  
DATE

Ronald C. Anderson  
(printed name of signatory)

Assistant Secretary  
(title of signatory)